IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

WP(C).No. 2323 of 2004(B)

PETITIONER:

N. MURALEEDHARAN, SENIOR ASSISTANT (RETIRED), ELECTRICAL DIVISION, K.S.E.B., PAYYANNUR, KANNUR DISTRICT.

BY ADV. SRI.P.M.PAREETH

RESPONDENTS:
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1. KERALA STATE ELECTRICITY BOARD REPRESENTED BY ITS SECRETARY, VIDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM.

2. CHIEF ENGINEER (HRM), KERALA STATE ELECTRICITY BOARD, VIDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM.

3. DEPUTY CHIEF ENGINEER, KERALA STATE ELECTRICITY BOARD, ELECTRICAL CIRCLE, KASARAGOD.

4. EXECUTIVE ENGINEER, KERALA STATE ELECTRICITY BOARD, ELECTRICAL DIVISION, PAYYANNUR, KANNUR DISTRICT.

BY ADV. SRI.C.C.THOMAS, SC, K.S.E.B
SRI.K.S.ANIL, SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.2323/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE PHOTOCOPY OF THE MEMO OF CHARGES WITH STATEMENT OF ALLEGATIONS NO.GB1/DIS.A/UDM/85/94/728 DATED 5.7.94 ISSUED BY 3RD RESPONDENT OT THE PETITIONER.

EXT.P2: TRUE PHOTOCOPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER BEFORE 3RD RESPONDENT DATED 8.8.1994.

EXT.P3: TRUE PHOTOCOPY OF THE SHOW CAUSE NOTICE DATED 17.6.2002 ISSUED TO THE PETITIONER BY EXECUTIVE ENGINEER (IN CHARGE, ELECTRICAL CIRCLE, KASARGOD.)

EXT.P4: TRUE PHOTOCOPY OF THE REPLY STATEMENT DATED 12.7.2002 SUBMITTED BY PETITIONER BEFORE EXECUTIVE ENGINEER, ELECTRICAL CIRCLE, KASARAGOD.

EXT.P5: TRUE PHOTOCOPY OF THE PROCEEDINGS NO.GB1/DA/UDMA/85/94/510 DATED 16.11.2002 ISSUED BY 3RD RESPONDENT.

EXT.P6: TRUE PHOTOCOPY OF THE APPEAL DATED 17.12.2002 SUBMITTED BY THE PETITIONER BEFORE 2ND RESPONDENT.

EXT.P7: TRUE PHOTOCOPY OF THE ORDER DATED 23.4.2003 NO.EBVS 1/2/03 ISSUED BY SECOND RESPONDENT.

EXT.P8: TRUE PHOTOCOPY OF THE PROCEEDINGS NO.EB2/DA/02-03/2689 DATED 13.12.2002 ISSUED BY 4TH RESPONDENT.

EXT.P9: TRUE PHOTOCOPY OF THE PENSION AUTHORISATION ORDER NO.PA.VII/PPO-31305 DATED 17.11.2003 ISSUED BY CHIEF INTERNAL AUDITOR, KSEB, THIRUVANANTHAPURAM.

//TRUE COPY//

P.A. TO JUDGE

P.R.RAMAN, J.

W.P.(C) NO. 2323 OF 2004

Dated this the 23rd day of January, 2007

J U D G M E N T

The petitioner was an employee of the Kerala State Electricity Board and he retired from service on 31/5/2003. At a time when he was working as a Senior Assistant, he was faced with a disciplinary action pursuant to Exhibit P1 charge sheet dated 5/7/94. Subsequently an enquiry officer was appointed on 24/4/01 and the enquiry officer submitted his report on 19/4/02. Thereafter a show cause notice was issued on 17/6/2002, Exhibit P3 produced in the case, to show cause as to why a penalty of reduction in the rank to the post of Junior Assistant temporarily for a period of six months be not imposed on the petitioner. Though the petitioner submitted a reply thereto, ultimately the authorities were not convinced of the objections and finally imposed the punishment by Exhibit P5 dated 16/11/2002 which was however implemented by Exhibit P8 order dated 13/12/2002. Exhibit P8 reads that “the petitioner working as Senior assistant in Divisional Office is hereby informed that he is reverted as Junior Assistant from 1/12/2002 as directed in the order dated 16/11/2002 (Exhibit

P5). His pay and allowances from the above date will be regulated accordingly." Petitioner retired on 31/5/2003 while undergoing the punishment. As per Exhibit P5 order, the punishment imposed on the petitioner is as follows:

> "It is hereby ordered to effect reversion from the existing post of Senior Assistant to Junior Assistant for six months with effect from December 2002 onwards."

2. Prior to Exhibit P5, a show cause notice was issued which is Exhibit P3 and the last paragraph to the show cause notice reads as follows:

> "Undersigned in conformity with the findings of the enquiry officer, proposes to impose a punishment on the incumbent for reversion to the post of Junior Assistant from the present post of Senior Assistant temporarily for 6 months."
>
> (emphasis given)

3. Thus what was proposed as punishment is a reversion for six months temporarily for which alone a show cause notice was issued and eventually he was also imposed with the punishment of reversion for a period of six months. The inordinate delay on the part of the authorities in completing the enquiry proceedings and imposing the punishment has resulted in the petitioner retiring while undergoing the punishment. If he had been imposed the punishment earlier, there cannot be any doubt

that his position as Senior Assistant would have been restored to him on completion of the period of six months punishment as Junior Assistant since the reversion is only temporary for a period of six months. Therefore on completion of the period of six months, the petitioner is entitled to be put back in the same position as Senior Assistant and he would have retired as Senior Assistant. The punishment cannot therefore have the effect of imposing double punishment on the petitioner and if the authorities refuses the pensionary benefit reckoning the emoluments as is applicable to a Senior Assistant, virtually the punishment imposed will be punishment of reversion as Junior Assistant permanently which is not done in this case. If so, on completion of the six months period of punishment, the petitioner will be entitled for the pensionary benefits recomputed on the basis of the pay as he would have drawn in the post of Senior Assistant. Therefore with effect from 1/06/03 the petitioner's pension will be recomputed on the basis of the last drawn pay as he would have drawn as Senior Assistant and pay the same accordingly.

4. Another grievance of the petitioner is that he was undergoing punishment for the period from 19/3/94 to 2/2/95

which has not been regularised so far.

5. In the circumstances, there will be direction to pass appropriate orders regularising the suspension for the period between 19/3/94 and 2/2/95.

6. Even though the petitioner has raised contention as against the disciplinary action, confronted with the situation that the punishment imposed is less having regard to the misconduct committed, the learned counsel appearing for the petitioner submitted that he is not pressing those contentions.

7. The benefit as available to the petitioner as already found above, shall be computed and paid as early as possible and at any rate within a period of three months.

Produce a copy of this judgment before the respondents for compliance.

Writ petition is disposed of as above.

P.R.RAMAN, JUDGE

Rp